



State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 07D of 09

 The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

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1 **SECTION 300.** 938.30 (2) of the statutes is amended to read:

2 938.30 (2) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS; SUBSTITUTION.

3 At or before the commencement of the hearing under this section the juvenile and
4 the parent, guardian, ~~or~~ legal custodian, or Indian custodian shall be advised of their
5 rights as specified in s. 938.243 and shall be informed that the hearing shall be to the
6 court and that a request for a substitution of judge under s. 938.29 must be made
7 before the end of the plea hearing or is waived. Nonpetitioning parties, including the
8 juvenile, shall be granted a continuance of the plea hearing if they wish to consult
9 with an attorney on the request for a substitution of a judge.

10 **SECTION 301.** 938.30 (6) (a) of the statutes is amended to read:

11 938.30 (6) (a) If a petition is not contested, the court, subject to s. 938.299 (10),
12 shall set a date for the dispositional hearing which allows reasonable time for the
13 parties to prepare but is no more than 10 days from the plea hearing for a juvenile
14 who is held in secure custody and no more than 30 days from the plea hearing for a
15 juvenile who is not held in secure custody. If all parties consent the court may
16 proceed immediately with the dispositional hearing. If a citation is not contested, the
17 court may proceed immediately to enter a dispositional order.

18 **SECTION 302.** 938.30 (7) of the statutes is amended to read:

19 938.30 (7) CONTESTED PETITIONS OR CITATIONS; DATE FOR FACT-FINDING HEARING.

20 If the petition or citation is contested, the court, subject to s. 938.299 (10), shall set
21 a date for the fact-finding hearing that allows a reasonable time for the parties to
22 prepare but is no more than 20 days ~~from~~ after the plea hearing for a juvenile who
23 is held in secure custody and no more than 30 days ~~from~~ after the plea hearing for
24 a juvenile who is not held in secure custody.

25 **SECTION 303.** 938.305 of the statutes is amended to read:

BILL**SECTION 303****938.305 Hearing upon the involuntary removal of a juvenile.**

Notwithstanding other time periods for hearings under this chapter, if a juvenile is removed from the physical custody of the juvenile's parent or guardian under s. 938.19 (1) (c) or (d) 5. without the consent of the parent or guardian, the court, subject to s. 938.299 (10), shall schedule a plea hearing and fact-finding hearing within 30 days after a request from the parent or guardian from whom custody was removed. The plea hearing and fact-finding hearing may be combined. This time period may be extended only with the consent of the requesting parent or guardian.

SECTION 304. 938.31 (7) (a) of the statutes is amended to read:

938.31 (7) (a) At the close of the fact-finding hearing, the court, subject to s. 938.299 (10), shall set a date for the dispositional hearing that allows a reasonable time for the parties to prepare but is no more than 10 days after the fact-finding hearing for a juvenile in secure custody and no more than 30 days after the fact-finding hearing for a juvenile not held in secure custody. If all parties consent, the court may immediately proceed with a dispositional hearing.

SECTION 305. 938.315 (1) (a) 11. of the statutes is created to read:

938.315 (1) (a) 11. A continuance, not to exceed 20 days, granted at the request of the parent, Indian custodian, or tribe of a juvenile who is or may be an Indian juvenile to enable the requester to prepare for a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the juvenile.

SECTION 306. 938.315 (2) of the statutes is amended to read:

938.315 (2) CONTINUANCE FOR GOOD CAUSE. A continuance may be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the representative of the public under s. 938.09

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1 or the parties, the request of a person specified in sub. (1) (a) 11., the interests of the
2 victims, and the interest of the public in the prompt disposition of cases.

3 **SECTION 307.** 938.32 (1) (d) 1. of the statutes is renumbered 938.32 (1) (d) and
4 amended to read:

5 938.32 (1) (d) If the court finds that any of the circumstances specified in s.
6 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing
7 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
8 permanency plan for the juvenile. ~~The agency responsible for preparing the~~
9 ~~permanency plan shall file the permanency plan with the court not less than 5 days~~
10 ~~before the date of the hearing.~~

11 **SECTION 308.** 938.32 (1) (d) 2. of the statutes is repealed.

12 **SECTION 309.** 938.32 (1) (d) 3. of the statutes is repealed.

13 **SECTION 310.** 938.33 (4) (d) of the statutes is created to read:

14 938.33 (4) (d) In the case of a proceeding under s. 938.13 (4), (6), (6m), or (7),
15 if the agency knows or has reason to know that the juvenile is an Indian juvenile, a
16 description of any efforts undertaken to determine whether the juvenile is an Indian
17 juvenile; specific information showing that continued custody of the juvenile by the
18 parent or Indian custodian is likely to result in serious emotional or physical damage
19 to the juvenile, under s. 938.028 (4) (d) 1.; specific information showing that the
20 county department or agency primarily responsible for providing services to the
21 juvenile has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of
22 the Indian family and that those efforts have proved unsuccessful; a statement as to
23 whether the out-of-home care placement recommended is in compliance with the
24 order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6)
25 (b); and, if the recommended placement is not in compliance with that order, specific

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1 information showing good cause, as described in s. 938.028 (6) (d), for departing from
2 that order.

3 **SECTION 311.** 938.335 (3j) of the statutes is created to read:

4 938.335 (3j) INDIAN JUVENILE; ACTIVE EFFORTS FINDING. At hearings under this
5 section involving an Indian juvenile who is the subject of a proceeding under s. 938.13
6 (4), (6), (6m), or (7), if the agency, as defined in s. 938.38 (1) (a), is recommending
7 placement of the Indian juvenile in a foster home, treatment foster home, group
8 home, or residential care center for children and youth or in the home of a relative
9 other than a parent, the agency shall present as evidence specific information
10 showing all of the following:

11 (a) That continued custody of the Indian juvenile by the parent or Indian
12 custodian is likely to result in serious emotional or physical damage to the Indian
13 juvenile under s. 938.028 (4) (d) 1.

14 (b) That the county department or agency primarily responsible for providing
15 services to the Indian juvenile has made active efforts under s. 938.028 (4) (d) 2. to
16 prevent the breakup of the Indian family and that those efforts have proved
17 unsuccessful.

18 (c) That the placement recommended is in compliance with the order of
19 placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) or,
20 if that placement is not in compliance with that order, good cause, as described in s.
21 938.028 (6) (d), for departing from that order.

22 **SECTION 312.** 938.345 (1m) of the statutes is created to read:

23 938.345 (1m) INDIAN JUVENILE; PLACEMENT PREFERENCES. (a) Subject to s.
24 938.028 (6) (b), if the juvenile is an Indian juvenile who is in need of protection or
25 services under s. 938.13 (4), (6), (6m), or (7) and who is being placed in an

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1 out-of-home care placement, as defined in s. 938.028 (2) (c), the court shall designate
2 one of the placements specified in s. 938.028 (6) (a) 1. to 4. as the placement for the
3 Indian juvenile, in the order of preference listed, unless the court finds good cause,
4 as described in s. 938.028 (6) (d), for departing from that order.

5 **SECTION 313.** 938.355 (2) (b) 6v. of the statutes is created to read:

6 938.355 (2) (b) 6v. If the juvenile is an Indian juvenile who is in need of
7 protection or services under s. 983.13 (4), (6), (6m), or (7) and who is placed outside
8 the home, a finding supported by clear and convincing evidence, including the
9 testimony of one or more qualified expert witnesses, that continued custody of the
10 Indian juvenile by the parent or Indian custodian is likely to result in serious
11 emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and a finding
12 supported by clear and convincing evidence as to whether the county department or
13 agency primarily responsible for providing services under a court order has made
14 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family
15 and that those efforts have proved unsuccessful. The findings under this subsection
16 shall be in addition to the findings under subd. 6., except that for the sole purpose
17 of determining whether the cost of providing care for an Indian juvenile is eligible
18 for reimbursement under 42 USC 670 to 679b, the findings under this subdivision
19 and the findings under subd. 6. shall be considered to be the same findings.

20 **SECTION 314.** 938.355 (2) (d) of the statutes is amended to read:

21 938.355 (2) (d) The court shall provide a copy of the dispositional order to the
22 juvenile's parent, guardian, legal custodian, or trustee and, if the juvenile is an
23 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
24 or (7), to the Indian juvenile's Indian custodian and tribe.

BILL**SECTION 315**

1 **SECTION 315.** 938.355 (2d) (c) 1. of the statutes is renumbered 938.355 (2d) (c)
2 and amended to read:

3 938.355 **(2d)** (c) If the court finds that any of the circumstances under par. (b)
4 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38
5 (4m) within 30 days after the date of that finding to determine the permanency plan
6 for the juvenile. ~~If a hearing is held under this subdivision, the agency responsible~~
7 ~~for preparing the permanency plan shall file the permanency plan with the court not~~
8 ~~less than 5 days before the date of the hearing.~~

9 **SECTION 316.** 938.355 (2d) (c) 2. of the statutes is repealed.

10 **SECTION 317.** 938.355 (2d) (c) 3. of the statutes is repealed.

11 **SECTION 318.** 938.355 (2d) (d) of the statutes is created to read:

12 938.355 **(2d)** (d) This subsection does not affect the requirement under sub. (2)
13 (b) 6v. that the court include in a dispositional order placing an Indian juvenile who
14 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) outside the
15 home a finding as to whether the county department or agency primarily responsible
16 for providing services under a court order has made active efforts under s. 938.028
17 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have
18 proved unsuccessful.

19 **SECTION 319.** 938.355 (6) (an) 1. of the statutes is amended to read:

20 938.355 **(6)** (an) 1. If a juvenile who has violated a municipal ordinance, other
21 than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a
22 dispositional order imposed by the municipal court, the municipal court may petition
23 the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose
24 on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with
25 monitoring by an electronic monitoring system. A sanction may be imposed under

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1 this subdivision only if, at the time of the judgment, the municipal court explained
2 the conditions to the juvenile and informed the juvenile of those possible sanctions
3 for a violation or if before the violation the juvenile has acknowledged in writing that
4 he or she has read, or has had read to him or her, those conditions and possible
5 sanctions and that he or she understands those conditions and possible sanctions.
6 The petition shall contain a statement of whether the juvenile may be subject to the
7 federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the juvenile may be
8 subject to that act, the names and addresses of the juvenile's Indian custodian, if any,
9 and tribe, if known.

10 **SECTION 320.** 938.355 (6) (b) of the statutes is amended to read:

11 938.355 (6) (b) *Motion to impose sanction.* A motion for imposition of a sanction
12 may be brought by the person or agency primarily responsible for the provision of
13 dispositional services, the district attorney or corporation counsel, or the court that
14 entered the dispositional order. If the court initiates the motion, that court is
15 disqualified from holding a hearing on the motion. Notice of the motion shall be given
16 to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all
17 parties present at the original dispositional hearing. The motion shall contain a
18 statement of whether the juvenile may be subject to the federal Indian Child Welfare
19 Act, 25 USC 1911 to 1963 and, if the juvenile may be subject to that act, the names
20 and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

21 **SECTION 321.** 938.355 (6) (bm) of the statutes is created to read:

22 938.355 (6) (bm) *Indian juvenile; notice.* If the person initiating the motion
23 knows or has reason to know that the juvenile is an Indian juvenile who has been
24 found to be in need of protection or services under s. 938.13 (4), (6), (6m), or (7) or who
25 has been adjudged to have violated a civil law or ordinance, notice under par. (b) to

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1 the Indian juvenile's parent shall be provided in the manner specified in s. 938.028
2 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian
3 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after
4 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or
5 until at least 25 days after receipt of the notice by the U.S. secretary of the interior.
6 On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall
7 grant a continuance of up to 20 additional days to enable the requester to prepare
8 for the hearing.

*These findings are not required if they were made in the
dispositional order under which the juvenile is being
sanctioned.*

9 **SECTION 322.** 938.355 (6) (cr) of the statutes is created to read:

10 938.355 (6) (cr) *Indian juvenile; findings.* The court may not order the sanction
11 of placement in a place of nonsecure custody specified in par. (d) 1. for an Indian
12 juvenile who has been found to be in need of protection or services under s. 983.13
13 (4), (6), (6m), or (7) or who has been adjudged to have violated a civil law or ordinance
14 unless the court finds by clear and convincing evidence, including the testimony of
15 one or more qualified expert witnesses, that continued custody of the Indian juvenile
16 by the parent or Indian custodian is likely to result in serious emotional or physical
17 damage to the juvenile under s. 938.028 (4) (d) 1. and that the agency primarily
18 responsible for providing services for the Indian juvenile has made active efforts
19 under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those
20 efforts have proved unsuccessful. The findings under this paragraph shall be in
21 addition to the findings under par. (cm), except that for the sole purpose of
22 determining whether the cost of providing care for an Indian juvenile is eligible for
23 reimbursement under 42 USC 670 to 679b, the findings under this paragraph and
24 the findings under par. (cm) shall be considered to be the same findings.

25 **SECTION 323.** 938.355 (6m) (am) 1. of the statutes is amended to read:

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1 938.355 (6m) (am) 1. If a juvenile who has violated a municipal ordinance
2 enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by
3 the municipal court, the municipal court may petition the court assigned to exercise
4 jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction
5 specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at
6 the time of the judgment the municipal court explained the conditions to the juvenile
7 and informed the juvenile of that possible sanction or if before the violation the
8 juvenile has acknowledged in writing that he or she has read, or has had read to him
9 or her, those conditions and that possible sanction and that he or she understands
10 those conditions and that possible sanction. The petition shall contain a statement
11 of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25
12 USC 1911 to 1963, and, if the juvenile may be subject to that act, the names and
13 addresses of the juvenile's Indian custodian, if any, and tribe, if known.

14 **SECTION 324.** 938.355 (6m) (bm) of the statutes is created to read:

15 938.355 (6m) (bm) *Indian juvenile; notice.* If the person initiating the motion
16 knows or has reason to know that the juvenile is an Indian juvenile, notice under par.
17 (b) to the Indian juvenile's parent shall be provided in the manner specified in s.
18 938.028 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian
19 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after
20 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or
21 until at least 25 days after receipt of the notice by the U.S. secretary of the interior.
22 On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall
23 grant a continuance of up to 20 additional days to enable the requester to prepare
24 for the hearing.

25 **SECTION 325.** 938.355 (6m) (c) of the statutes is amended to read:

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1 938.355 (6m) (c) *Sanction hearing*. Before imposing a sanction under par. (a)
2 or (ag), the court shall hold a hearing at which the juvenile is entitled to be
3 represented by legal counsel and to present evidence. The Except as provided in par.
4 (bm), the hearing shall be held within 15 days after the filing of a motion under par.

5 (b). These findings are not required if they were made in the dispositional order
6 under which the juvenile is being sanctioned.

7 **SECTION 326.** 938.355 (6m) (cr) of the statutes is created to read:

8 938.355 (6m) (cr) *Indian juvenile; findings*. The court may not order the
9 sanction of placement in a place of nonsecure custody specified in par. (a) 1g. for an
10 Indian juvenile unless the court finds by clear and convincing evidence, including the
11 testimony of one or more qualified expert witnesses, that continued custody of the
12 Indian juvenile by the parent or Indian custodian is likely to result in serious
13 emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and that the
14 agency primarily responsible for providing services for the Indian juvenile has made
15 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family
16 and that those efforts have proved unsuccessful. The findings under this paragraph
17 shall be in addition to the findings under par. (cm), except that for the sole purpose
18 of determining whether the cost of providing care for an Indian juvenile is eligible
19 for reimbursement under 42 USC 670 to 679b, the findings under this paragraph and
20 the findings under par. (cm) shall be considered to be the same findings.

21 **SECTION 327.** 938.357 (1) (am) 1. of the statutes is amended to read:

22 938.357 (1) (am) 1. If the proposed change in placement involves any change
23 in placement other than a change in placement under par. (c), the person or agency
24 primarily responsible for implementing the dispositional order or the district
25 attorney shall cause written notice of the proposed change in placement to be sent
to the juvenile, the parent, guardian, and legal custodian of the juvenile, and any

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1 foster parent, treatment foster parent, or other physical custodian described in s.
2 48.62 (2) of the juvenile. If the juvenile is an Indian juvenile who is in need of
3 protection or services under s. 938.13 (4), (6), (6m), or (7), written notice shall also
4 be sent to the Indian juvenile's Indian custodian and tribe. The notice shall contain
5 the name and address of the new placement, the reasons for the change in placement,
6 a statement describing why the new placement is preferable to the present
7 placement, and a statement of how the new placement satisfies objectives of the
8 treatment plan ordered by the court.

9 **SECTION 328.** 938.357 (1) (am) 1g. of the statutes is created to read:

10 938.357 (1) (am) 1g. If the juvenile is an Indian juvenile who is in need of
11 protection or services under s. 938.13 (4), (6), (6m), or (7) and if the proposed change
12 in placement would change the Indian juvenile's placement from a placement outside
13 the home to another placement outside the home, a notice under subd. 1. shall also

14 contain ~~specific information showing that continued custody of the Indian juvenile~~
15 ~~by the parent or Indian custodian is likely to result in serious emotional or physical~~
16 ~~damage to the juvenile under s. 938.028 (4) (d) 1., specific information showing that~~
17 ~~the agency primarily responsible for implementing the dispositional order has made~~
18 ~~active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family~~
19 ~~and that those efforts have proved unsuccessful,~~ a statement as to whether the new

20 placement is in compliance with the order of placement preference under s. 938.028
21 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance
22 with that order, specific information showing good cause, as described in s. 938.028
23 (6) (d), for departing from that order.

24 **SECTION 329.** 938.357 (1) (am) 1m. of the statutes is created to read:

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1 938.357 (1) (am) 1m. In a proceeding involving an Indian juvenile who is in
2 need of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under subd.
3 1. to the Indian juvenile's parent, Indian custodian, and tribe shall be provided in the
4 manner specified in s. 938.028 (4) (a). No hearing on the request may be held until
5 at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian
6 custodian, and tribe or until at least 25 days after receipt of the notice by the U.S.
7 secretary of the interior. On request of the Indian juvenile's parent, Indian
8 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
9 to enable the requester to prepare for the hearing.

10 **SECTION 330.** 938.357 (1) (am) 2. of the statutes is amended to read:

11 938.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of
12 a specific foster or treatment foster placement under s. 938.355 (2) (b) 2. may obtain
13 a hearing on the matter by filing an objection with the court within 10 days after
14 receipt of the notice. Placements may not be changed until 10 days after that notice
15 is sent to the court unless the parent, guardian, ~~or legal custodian and, or Indian~~
16 custodian, the juvenile, if 12 or more years of age, and the juvenile's tribe, if the
17 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
18 (4), (6), (6m), or (7), sign written waivers of objection, except that changes in
19 placement that were authorized in the dispositional order may be made immediately
20 if notice is given as required under subd. 1. In addition, a hearing is not required for
21 placement changes authorized in the dispositional order except when an objection
22 filed by a person who received notice alleges that new information is available that
23 affects the advisability of the court's dispositional order.

24 **SECTION 331.** 938.357 (1) (am) 3. of the statutes, as affected by 2007 Wisconsin
25 Act 20, is amended to read:

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1 938.357 (1) (am) 3. If the court changes the juvenile's placement from a
2 placement outside the home to another placement outside the home, the change in
3 placement order shall contain the applicable order under sub. (2v) (a) 1m. and the
4 applicable statement under sub. (2v) (a) 2. If the court changes the placement of an
5 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
6 or (7) from a placement outside the home to another placement outside the home, the
7 change in placement order shall, in addition, contain the findings under sub. (2v) (a)
8 4. and comply with the order of placement preference under s. 938.028 (6) (a) or, if
9 applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s.
10 938.028 (6) (d), for departing from that order.

11 **SECTION 332.** 938.357 (1) (c) 1m. of the statutes is created to read:

12 938.357 (1) (c) 1m. If the juvenile is an Indian juvenile who is in need of
13 protection or services under s. 938.13 (4), (6), (6m), or (7), a request under subd. 1.
14 shall also contain specific information showing that continued custody of the Indian
15 juvenile by the parent or Indian custodian is likely to result in serious emotional or
16 physical damage to the juvenile under s. 938.028 (4) (d) 1., specific information
17 showing that the agency primarily responsible for implementing the dispositional
18 order has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the
19 Indian family and that those efforts have proved unsuccessful, a statement as to
20 whether the new placement is in compliance with the order of placement preference
21 under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement
22 is not in compliance with that order, specific information showing good cause, as
23 described in s. 938.028 (6) (d), for departing from that order.

24 **SECTION 333.** 938.357 (1) (c) 2. of the statutes is amended to read:

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1 938.357 (1) (c) 2. The court shall hold a hearing prior to ordering a change in
2 placement requested under subd. 1. At least 3 days prior to the hearing, the court
3 shall provide notice of the hearing, together with a copy of the request for the change
4 in placement, to the juvenile, the parent, guardian, and legal custodian of the
5 juvenile, ~~and all parties that are bound by the dispositional order, and, if the juvenile~~
6 is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6),
7 (6m), or (7), the Indian juvenile's Indian custodian and tribe. If all parties consent,
8 the court may proceed immediately with the hearing.

9 **SECTION 334.** 938.357 (1) (c) 2m. of the statutes is created to read:

10 938.357 (1) (c) 2m. In a proceeding involving an Indian juvenile who is in need
11 of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under subd. 2. to
12 the Indian juvenile's parent, Indian custodian, and tribe shall be provided in the
13 manner specified in s. 938.028 (4) (a). No hearing on the request may be held until
14 at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian
15 custodian, and tribe or until at least 25 days after receipt of the notice by the U.S.
16 secretary of the interior. On request of the Indian juvenile's parent, Indian
17 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
18 to enable the requester to prepare for the hearing.

19 **SECTION 335.** 938.357 (1) (c) 3. of the statutes, as affected by 2007 Wisconsin
20 Act 20, is amended to read:

21 938.357 (1) (c) 3. If the court changes the juvenile's placement from a placement
22 in the juvenile's home to a placement outside the juvenile's home, the change in
23 placement order shall contain the findings under sub. (2v) (a) 1., the applicable order
24 under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in
25 addition the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to

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1 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the
2 court changes the placement of an Indian juvenile who is in need of protection or
3 services under s. 938.13 (4), (6), (6m), or (7) from a placement in the Indian juvenile's
4 home to a placement outside the Indian juvenile's home, the change in placement
5 order shall contain the findings under sub. (2v) (a) 4. and comply with the order of
6 placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b),
7 unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from
8 that order.

9 **SECTION 336.** 938.357 (2m) (a) of the statutes is amended to read:

10 938.357 (2m) (a) *Request; information required.* The juvenile, the parent,
11 guardian, or legal custodian of the juvenile, or any person or agency primarily bound
12 by the dispositional order, other than the person or agency responsible for
13 implementing the order, or, if the juvenile is an Indian juvenile who is in need of
14 protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian
15 custodian may request a change in placement under this paragraph. The request
16 shall contain the name and address of the new placement requested and shall state
17 what new information is available that affects the advisability of the current
18 placement. If the proposed change in placement would change the placement of a
19 juvenile placed in the juvenile's home to a placement outside the home, the request
20 shall also contain specific information showing that continued placement of the
21 juvenile in the juvenile's home would be contrary to the welfare of the juvenile and,
22 unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific
23 information showing that the agency primarily responsible for implementing the
24 dispositional order has made reasonable efforts to prevent the removal of the
25 juvenile from the home, while assuring that the juvenile's health and safety are the

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1 paramount concerns. The request shall be submitted to the court. The court may
2 also propose a change in placement on its own motion. (1.)

3 **SECTION 337.** 938.357 (2m) (am) of the statutes is created to read:

4 **938.357 (2m) (am) *Indian juvenile; information required.*** If the proposed
5 change of placement would change the placement of an Indian juvenile placed in the
6 Indian juvenile's home under s. 938.357 (4), (6), (6m), or (7) to a placement outside
7 the Indian juvenile's home ~~or would change the placement of an Indian juvenile~~
8 ~~placed outside the home to another placement outside the home,~~ a request under par.

9 (a) shall also contain specific information showing that continued custody of the
10 Indian juvenile by the parent or Indian custodian is likely to result in serious
11 emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1., specific
12 information showing that the agency primarily responsible for implementing the
13 dispositional order has made active efforts under s. 938.028 (4) (d) 2. to prevent the
14 breakup of the Indian family and that those efforts have proved unsuccessful, a
15 statement as to whether the new placement is in compliance with the order of
16 placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and,
17 if the new placement is not in compliance with that order, specific information
18 showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

19 **SECTION 338.** 938.357 (2m) (b) of the statutes is amended to read:

20 **938.357 (2m) (b) *Hearing; when required.*** The court shall hold a hearing prior
21 to ordering any change in placement requested or proposed under par. (a) if the
22 request states that new information is available that affects the advisability of the
23 current placement. A hearing is not required if the requested or proposed change in
24 placement does not involve a change in placement of a juvenile placed in the
25 juvenile's home to a placement outside the juvenile's home, written waivers of

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objection to the proposed change in placement are signed by all parties entitled to receive notice under ~~sub. (1) (am) 1. this paragraph~~, and the court approves. If a hearing is scheduled, not less than 3 days before the hearing the court shall notify the juvenile, the parent, guardian, and legal custodian of the juvenile, any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile, ~~and all parties who are bound by the dispositional order at least 3 days prior to the hearing~~, and, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe. A copy of the request or proposal for the change in placement shall be attached to the notice. If all of the parties consent, the court may proceed immediately with the hearing.

SECTION 339. 938.357 (2m) (bm) of the statutes is created to read:

938.357 (2m) (bm) *Indian juvenile; notice*. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under par. (b) to the Indian juvenile's parent, Indian custodian, and tribe shall be provided in the manner specified in s. 938.028 (4) (a). No hearing on the request or proposal may be held until at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or until at least 25 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

*chg
CRIP* **SECTION 340.** 938.357 (2m) (c) of the statutes, as affected by 2007 Wisconsin Act 20, is ~~amended~~ renumbered 938.357 (2m)(e) 1. and amended to read:

(1.) 938.357 (2m) (c) *Findings required*. If the court changes the juvenile's placement from a placement in the juvenile's home to a placement outside the

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juvenile's home, the change in placement order shall contain the findings under sub. (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the court changes the juvenile's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain the applicable order under sub. (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the Indian juvenile's home to a placement outside the Indian juvenile's home or from a placement outside the Indian juvenile's home to another placement outside the Indian juvenile's home, the change in placement order shall, in addition, contain the findings under sub. (2v) (a) 4. and comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from the order.

SECTION 341. 938.357 (2v) (a) 4. of the statutes is created to read:

938.357 (2v) (a) 4. If the change in placement order changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the Indian juvenile's home to a placement outside the Indian juvenile's home ~~or from a placement outside the Indian juvenile's home to another placement outside the Indian juvenile's home~~, a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile

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1 under s. 938.028 (4) (d) 1. and a finding supported by clear and convincing evidence
2 that the agency primarily responsible for implementing the dispositional order has
3 made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian
4 family and that those efforts have proved unsuccessful. The findings under this
5 subdivision shall be in addition to the findings under subd. 1., except that for the sole
6 purpose of determining whether the cost of providing care for an Indian juvenile is
7 eligible for reimbursement under 42 USC 670 to 679b, the findings under this
8 subdivision and the findings under subd. 1. shall be considered to be the same
9 findings.

10 **SECTION 342.** 938.357 (2v) (c) 1. of the statutes is renumbered 938.357 (2v) (c)
11 and amended to read:

12 938.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances
13 under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold
14 a hearing under s. 938.38 (4m) within 30 days after the date of that finding to
15 determine the permanency plan for the juvenile. ~~If a hearing is held under this~~
16 ~~paragraph, the agency responsible for preparing the permanency plan shall file the~~
17 ~~permanency plan with the court at least 5 days before the date of the hearing.~~

18 **SECTION 343.** 938.357 (2v) (c) 2. of the statutes is repealed.

19 **SECTION 344.** 938.357 (2v) (c) 3. of the statutes is repealed.

20 **SECTION 345.** 938.363 (1) (a) of the statutes is amended to read:

21 938.363 (1) (a) A juvenile, the juvenile's parent, guardian, or legal custodian,
22 any person or agency bound by a dispositional order, ~~or~~ the district attorney or
23 corporation counsel in the county in which the dispositional order was entered or, if
24 the juvenile is an Indian juvenile who is in need of protection or services under s.
25 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian may request a

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1 revision in the order that does not involve a change in placement, including a revision
2 with respect to the amount of child support to be paid by a parent. The court may
3 also propose a revision. The request or court proposal shall set forth in detail the
4 nature of the proposed revision and what new information is available that affects
5 the advisability of the court's disposition. The request or court proposal shall be
6 submitted to the court. The court shall hold a hearing on the matter prior to any
7 revision of the dispositional order if the request or court proposal indicates that new
8 information is available that affects the advisability of the court's dispositional order,
9 unless written waivers of objections to the revision are signed by all parties entitled
10 to receive notice and the court approves.

11 **SECTION 346.** 938.363 (1) (b) of the statutes is amended to read:

12 938.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court
13 shall notify the juvenile, the juvenile's parent, guardian, and legal custodian, all
14 parties bound by the dispositional order, the juvenile's foster parent, treatment
15 foster parent, or other physical custodian described in s. 48.62 (2), ~~and~~ the district
16 attorney or corporation counsel in the county in which the dispositional order was
17 entered ~~at least 3 days prior to the hearing and, if the juvenile is an Indian juvenile~~
18 who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian
19 juvenile's Indian custodian and tribe. A copy of the request or proposal shall be
20 attached to the notice. If all parties consent, the court may proceed immediately with
21 the hearing. No revision may extend the effective period of the original order, or
22 revise an original order under s. 938.34 (3) (f) or (6) (am) to impose more than a total
23 of 30 days of detention, nonsecure custody, or inpatient treatment on a juvenile.

24 **SECTION 347.** 938.365 (1m) of the statutes is amended to read:

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1 938.365 (1m) REQUEST FOR EXTENSION. The parent, juvenile, guardian, legal
2 custodian, any person or agency bound by the dispositional order, the district
3 attorney or corporation counsel in the county in which the dispositional order was
4 entered, ~~or the court on its own motion, or, if the juvenile is an Indian juvenile who~~
5 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian
6 juvenile's Indian custodian may request an extension of an order under s. 938.355.
7 The request shall be submitted to the court ~~which~~ that entered the order. An order
8 under s. 938.355 for placement of a juvenile in detention, nonsecure custody, or
9 inpatient treatment under s. 938.34 (3) (f) or (6) (am) may not be extended. Other
10 orders or portions of orders under s. 938.355 may be extended only as provided in this
11 section.

12 **SECTION 348.** 938.365 (2) of the statutes is amended to read:

13 938.365 (2) NOTICE. No order may be extended without a hearing. The court
14 shall ~~notify~~ provide notice of the time and place of the hearing to the juvenile or the
15 juvenile's guardian ad litem or counsel, the juvenile's parent, guardian, and legal
16 custodian, all of the parties present at the original hearing, the juvenile's foster
17 parent, treatment foster parent or other physical custodian described in s. 48.62 (2),
18 ~~and~~ the district attorney or corporation counsel in the county in which the
19 dispositional order was entered ~~of the time and place of the hearing, and, if the~~
20 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
21 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian.

22 **SECTION 349.** 938.365 (2g) (b) 4. of the statutes is created to read:

23 938.365 (2g) (b) 4. If the juvenile is an Indian juvenile who is placed outside
24 the home under s. 938.13 (4), (6), (6m), or (7), specific information showing that active

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1 efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian
2 family and that those efforts have proved unsuccessful.

3 **SECTION 350.** 938.365 (2m) (a) 1. of the statutes is amended to read:

4 938.365 (2m) (a) 1. Any party may present evidence relevant to the issue of
5 extension. If the juvenile is placed outside of his or her home, the person or agency
6 primarily responsible for providing services to the juvenile shall present as evidence
7 specific information showing that the person or agency has made reasonable efforts
8 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile
9 to the home is the goal of the permanency plan and any of the circumstances under
10 s. 938.355 (2d) (b) 1. to 4. applies. If an Indian juvenile is placed outside the home
11 under s. 938.13 (4), (6), (6m), or (7), the person or agency primarily responsible for
12 providing services to the Indian juvenile shall also present as evidence specific
13 information showing that the person or agency has made active efforts under s.
14 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts
15 have proved unsuccessful.

16 1m. The court shall make findings of fact and conclusions of law based on the
17 evidence. The findings of fact shall include a finding as to whether reasonable efforts
18 were made by the agency primarily responsible for providing services to the juvenile
19 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile
20 to the home is the goal of the permanency plan and the court finds that any of the
21 circumstances under s. 938.355 (2d) (b) 1. to 4. applies. If the juvenile is an Indian
22 juvenile who is placed outside the home under s. 938.13 (4), (6), (6m), or (7), the
23 findings of fact shall also include a finding as to whether active efforts under s.
24 938.028 (4) (d) 2. were made to prevent the breakup of the Indian family and as to

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1 whether those efforts have proved unsuccessful. An order shall be issued under s.
2 938.355.

3 **SECTION 351.** 938.365 (2m) (a) 3. of the statutes is amended to read:

4 938.365 (2m) (a) 3. The court shall make the findings under subd. 1. 1m.
5 relating to reasonable efforts to achieve the goal of the juvenile's permanency plan
6 and the findings under subd. 2. on a case-by-case basis based on circumstances
7 specific to the juvenile and shall document or reference the specific information on
8 which those findings are based in the order issued under s. 938.355. An order that
9 merely references subd. 1. 1m. or 2. without documenting or referencing that specific
10 information in the order or an amended order that retroactively corrects an earlier
11 order that does not comply with this subdivision is not sufficient to comply with this
12 subdivision.

13 **SECTION 352.** 938.365 (2m) (ad) 1. of the statutes is renumbered 938.365 (2m)
14 (ad) and amended to read:

15 938.365 (2m) (ad) If the court finds that any of the circumstances under s.
16 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing
17 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
18 permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~
19 ~~agency responsible for preparing the permanency plan shall file the permanency~~
20 ~~plan with the court not less than 5 days before the date of the hearing.~~

21 **SECTION 353.** 938.365 (2m) (ad) 2. of the statutes is repealed.

22 **SECTION 354.** 938.365 (2m) (ag) of the statutes is amended to read:

23 938.365 (2m) (ag) The court shall give a foster parent, treatment foster parent,
24 or other physical custodian described in s. 48.62 (2) who is notified of a hearing under
25 ~~par. (ad) 2. or~~ sub. (2) an opportunity to be heard at the hearing by permitting the

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1 foster parent, treatment foster parent, or other physical custodian to make a written
2 or oral statement during the hearing, or to submit a written statement prior to the
3 hearing, relevant to the issue of extension. A foster parent, treatment foster parent,
4 or other physical custodian who receives notice of a hearing under ~~par. (a) 2. or sub.~~
5 (2) and an opportunity to be heard under this paragraph does not become a party to
6 the proceeding on which the hearing is held solely on the basis of receiving that notice
7 and having the opportunity to be heard.

8 **SECTION 355.** 938.38 (3) (intro.) of the statutes is amended to read:

9 938.38 (3) TIME. (intro.) Subject to s. 938.355 (2d) (c) 1-, the agency shall file
10 the permanency plan with the court within 60 days after the date on which the
11 juvenile was first removed from his or her home, except under either of the following
12 conditions:

13 **SECTION 356.** 938.38 (4) (i) of the statutes is created to read:

14 938.38 (4) (i) If the juvenile is an Indian juvenile who is in need of protection
15 or services under s. 938.13 (4), (6), (6m), or (7), all of the following:

16 1. The name, address, and telephone number of the Indian juvenile's Indian
17 custodian and tribe.

18 2. A description of the remedial services and rehabilitation programs offered
19 under s. 938.028 (4) (d) 2. in an effort to prevent the breakup of the Indian family.

20 3. A statement as to whether the Indian juvenile's placement is in compliance
21 with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s.
22 938.028 (6) (b) and, if the placement is not in compliance with that order, a statement
23 as to whether there is good cause, as described in s. 938.028 (6) (d), for departing from
24 that order.

25 **SECTION 357.** 938.38 (4m) of the statutes is created to read:

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1 938.38 (4m) PERMANENCY PLAN DETERMINATION HEARING. (a) If in a proceeding
2 under s. 938.21, 938.32, 938.355, 938.357, or 938.365 the court finds that any of the
3 circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent,
4 the court shall hold a hearing within 30 days after the date of that finding to
5 determine the permanency plan for the juvenile. If a hearing is held under this
6 paragraph, the agency responsible for preparing the permanency plan shall file the
7 permanency plan with the court not less than 5 days before the hearing.

8 (b) At least 10 days before the hearing the court shall notify the juvenile, any
9 parent, guardian, and legal custodian of the juvenile, any foster parent, treatment
10 foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile and,
11 if the juvenile is an Indian juvenile who is or is alleged to be in need of protection or
12 services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian
13 and tribe of the time, place, and purpose of the hearing.

14 (c) If the court knows or has reason to know that the juvenile is an Indian
15 juvenile who is or is alleged to be in need of protection or services under s. 938.13 (4),
16 (6), (6m), or (7), notice under par. (b) to the Indian juvenile's parent, Indian custodian,
17 and tribe shall be provided in the manner specified in s. 938.028 (4) (a). No hearing
18 may be held under par. (a) until at least 10 days after receipt of the notice by the
19 Indian juvenile's parent, Indian custodian, and tribe or until at least 25 days after
20 receipt of the notice by the U.S. secretary of the interior. On request of the Indian
21 juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of
22 up to 20 additional days to enable the requester to prepare for the hearing.

23 (d) The court shall give a foster parent, treatment foster parent, or other
24 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)
25 an opportunity to be heard at the hearing by permitting the foster parent, treatment

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1 foster parent, or other physical custodian to make a written or oral statement during
2 the hearing, or to submit a written statement prior to the hearing, relevant to the
3 issues to be determined at the hearing. The foster parent, treatment foster parent,
4 or other physical custodian does not become a party to the proceeding on which the
5 hearing is held solely on the basis of receiving that notice and having the opportunity
6 to be heard.

7 **SECTION 358.** 938.38 (5) (b) of the statutes is amended to read:

8 938.38 (5) (b) The court or the agency shall notify ~~the parents of the juvenile,~~
9 ~~the juvenile, if he or she is 10 years of age or older, and; the juvenile's parent,~~
10 ~~guardian, and legal custodian;~~ the juvenile's foster parent, the juvenile's treatment
11 foster parent, the operator of the facility in which the juvenile is living, or the relative
12 with whom the juvenile is living; and, if the juvenile is an Indian juvenile who is in
13 need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's
14 Indian custodian and tribe of the date, time, and place of the review, of the issues to
15 be determined as part of the review, and of the fact that they may have an opportunity
16 to be heard at the review by submitting written comments not less than 10 working
17 days before the review or by participating at the review. The court or agency shall
18 notify the person representing the interests of the public, the juvenile's counsel, and
19 the juvenile's guardian ad litem of the date of the review, of the issues to be
20 determined as part of the review, and of the fact that they may submit written
21 comments not less than 10 working days before the review. The notices under this
22 paragraph shall be provided in writing not less than 30 days before the review and
23 copies of the notices shall be filed in the juvenile's case record.

24 **SECTION 359.** 938.38 (5) (bm) of the statutes is created to read:

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1 938.38 (5) (bm) If the juvenile is an Indian juvenile who is in need of protection
2 or services under s. 938.13 (4), (6), (6m), or (7), notice under par. (b) to the Indian
3 juvenile's parent, Indian custodian, and tribe shall be provided in the manner
4 specified in s. 938.028 (4) (a). No review may be held until at least 10 days after
5 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or
6 until at least 25 days after receipt of the notice by the U.S. secretary of the interior.
7 On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall
8 grant a continuance of up to 20 additional days to enable the requester to prepare
9 for the review.

10 **SECTION 360.** 938.38 (5) (c) 8. of the statutes is created to read:

11 938.38 (5) (c) 8. If the juvenile is an Indian juvenile who is in need of protection
12 or services under s. 938.13 (4), (6), (6m), or (7), whether active efforts under s. 938.028
13 (4) (d) 2. were made by the agency to prevent the breakup of the Indian family,
14 whether those efforts have proved unsuccessful, whether the Indian child's
15 placement is in compliance with the order of placement preference under s. 938.028
16 (6) (a) or, if applicable, s. 938.028 (6) (b), and, if the placement is not in compliance
17 with that order, whether there is good cause, as described in s. 938.028 (6) (d), for
18 departing from that order.

19 **SECTION 361.** 938.38 (5) (d) of the statutes is amended to read:

20 938.38 (5) (d) Notwithstanding s. 938.78 (2) (a), the agency that prepared the
21 permanency plan shall, at least 5 days before a review by a review panel, provide to
22 each person appointed to the review panel, the juvenile's parent, guardian, and legal
23 custodian, the person representing the interests of the public, the juvenile's counsel
24 and, the juvenile's guardian ad litem, and, if the juvenile is an Indian juvenile who
25 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian

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1 juvenile's Indian custodian and tribe a copy of the permanency plan and any written
2 comments submitted under par. (b). Notwithstanding s. 938.78 (2) (a), a person
3 appointed to a review panel, the person representing the interests of the public, the
4 juvenile's counsel ~~and~~, the juvenile's guardian ad litem, and, if the juvenile is an
5 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
6 or (7), the Indian juvenile's Indian custodian and tribe may have access to any other
7 records concerning the juvenile for the purpose of participating in the review. A
8 person permitted access to a juvenile's records under this paragraph may not disclose
9 any information from the records to any other person.

10 **SECTION 362.** 938.38 (5) (e) of the statutes is amended to read:

11 938.38 (5) (e) Within 30 days, the agency shall prepare a written summary of
12 the determinations under par. (c) and shall provide a copy to the court that entered
13 the order; the juvenile or the juvenile's counsel ~~or~~, guardian ad litem; the person
14 representing the interests of the public; the juvenile's parent ~~or~~, guardian ~~and~~, or
15 legal custodian; the juvenile's foster parent, the juvenile's treatment foster parent,
16 or the operator of the facility where the juvenile is living; and, if the juvenile is an
17 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
18 or (7), the Indian juvenile's Indian custodian and tribe.

19 **SECTION 363.** 938.38 (5m) (b) of the statutes is amended to read:

20 938.38 (5m) (b) Not less than 30 days before the date of the hearing, the court
21 shall notify the juvenile; the juvenile's parent, guardian, and legal custodian; the
22 juvenile's foster parent or treatment foster parent, the operator of the facility in
23 which the juvenile is living, or the relative with whom the juvenile is living; the
24 juvenile's counsel, and the juvenile's guardian ad litem; the agency that prepared the
25 permanency plan; ~~and~~ the person representing the interests of the public; and, if the

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1 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
2 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe of the date, time,
3 and place of the hearing.

4 **SECTION 364.** 938.38 (5m) (bm) of the statutes is created to read:

5 938.38 **(5m)** (bm) If the juvenile is an Indian juvenile who is in need of
6 protection or services under s. 938.13 (4), (6), (6m), or (7), notice under par. (b) to the
7 Indian juvenile's parent, Indian custodian, and tribe shall be provided in the manner
8 specified in s. 938.028 (4) (a). No hearing under par. (a) may be held until at least
9 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian,
10 and tribe or until at least 25 days after receipt of the notice by the U.S. secretary of
11 the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe,
12 the court shall grant a continuance of up to 20 additional days to enable the requester
13 to prepare for the hearing.

14 **SECTION 365.** 938.38 (5m) (d) of the statutes is amended to read:

15 938.38 **(5m)** (d) At least 5 days before the date of the hearing the agency that
16 prepared the permanency plan shall provide a copy of the permanency plan and any
17 written comments submitted under par. (c) to the court, to the juvenile's parent,
18 guardian, and legal custodian, to the person representing the interests of the public,
19 and to the juvenile's counsel or guardian ad litem, and, if the juvenile is an Indian
20 juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7),
21 to the Indian juvenile's Indian custodian and tribe. Notwithstanding s. 938.78 (2)
22 (a), the person representing the interests of the public and, the juvenile's counsel or
23 guardian ad litem, and, if the juvenile is an Indian juvenile who is in need of
24 protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian
25 custodian and tribe may have access to any other records concerning the juvenile for

BILL**SECTION 365**

1 the purpose of participating in the review. A person permitted access to a juvenile's
2 records under this paragraph may not disclose any information from the records to
3 any other person.

4 **SECTION 366.** 938.38 (5m) (e) of the statutes is amended to read:

5 938.38 (5m) (e) After the hearing, the court shall make written findings of fact
6 and conclusions of law relating to the determinations under sub. (5) (c) and shall
7 provide a copy of those findings of fact and conclusions of law to the juvenile; the
8 juvenile's parent, guardian, and legal custodian; the juvenile's foster parent or
9 treatment foster parent, the operator of the facility in which the juvenile is living,
10 or the relative with whom the juvenile is living; the agency that prepared the
11 permanency plan; and the person representing the interests of the public; and, if the
12 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe. The court shall
14 make the findings specified in sub. (5) (c) 7. on a case-by-case basis based on
15 circumstances specific to the juvenile and shall document or reference the specific
16 information on which those findings are based in the findings of fact and conclusions
17 of law prepared under this paragraph. Findings of fact and conclusions of law that
18 merely reference sub. (5) (c) 7. without documenting or referencing that specific
19 information in the findings of fact and conclusions of law or amended findings of fact
20 and conclusions of law that retroactively correct earlier findings of fact and
21 conclusions of law that do not comply with this paragraph are not sufficient to comply
22 with this paragraph.

23 **SECTION 367.** 938.538 (6m) (a) 1. of the statutes is repealed.

24 **SECTION 368.** 938.538 (6m) (a) 4. of the statutes is amended to read:

BILL

1 938.538 (6m) (a) 4. "Minority group member" means a Black, a Hispanic, or an
2 ~~American~~ Indian person.

3 **SECTION 369. Initial applicability.**

4 (1) INVOLUNTARY TERMINATION OF PARENTAL RIGHTS. The treatment of sections
5 48.415 (intro.) and (2) (a) 2., 48.42 (1) (e), and 48.424 (1) (b) and (3) of the statutes
6 first applies to a termination of parental rights petition filed on the effective date of
7 this subsection.

8 **SECTION 370. Effective date.**

9 (1) This act takes effect on July 1, 2008.

10 **(END)**

A handwritten signature, possibly reading 'dm', is written in the lower center of the page. It consists of a large, sweeping loop above the letters 'dm'.

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0174/4ins
GMM.....

(INSERT 57-14)

2. If the proposed change in placement would change the placement of an Indian child placed outside the home to another placement outside the home, a request under par. (a) shall also contain a statement as to whether the new placement is in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 48.028 (7) (e), for departing from that order. ✓

(END OF INSERT)

(INSERT 59-5)

no 11
If the court changes the placement of an Indian child from a placement in the Indian child's home to a placement outside the Indian child's home, the change in placement order shall, in addition, contain the findings under sub. (2v) (a) 4. and comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from that order. ✓
e 2

2.

(END OF INSERT)

(INSERT 154-18)

2. If the proposed change in placement would change the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement outside the home to another placement outside the home, a request under par. (a) shall also contain a statement as to whether the new

placement is in compliance with the order of placement preference under s. 938.028
✶ (6) (a) or ^eif applicable, s. 938.028^e (6) (b) and, if the new placement is not in
compliance with that order, specific information showing good cause, as described in
s. 938.028 (6) (d), for departing from that order.

(END OF INSERT)

(INSERT 156-5)

If the court changes the placement of an Indian juvenile who is in need of
protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the
Indian juvenile's home to a placement outside the Indian juvenile's home, the change
in placement order shall, in addition, contain the findings under sub. (2v) (a) 4. and
comply with the order of placement preference under s. 938.028 (6) (a) or, if
✶ applicable, s. 938.028 (6) (b), unless the^e court finds good cause, as described in s.
✶ ^{2-e}938.038 (6) (d), for departing from that order.

2.

(END OF INSERT)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0174/4dn

2...GMM: f:....

lmk

(date)

✓
✓
Mark Campbell and Mark Mitchell:

✓
In reviewing this redraft, please note all of the following:

1. As mentioned in my e-mail, there is no need to define "fraud" in the draft because that term is already well defined at common law. Basically, there are five elements to fraud:

a. A factual representation. ✓

b. The representation is untrue. ✓

c. The representation was made knowingly or with reckless disregard as to whether it was true or not. ✓

d. The representation was made with intent to deceive and to induce another to act on it. ✓

e. The person relied on the representation to his or her detriment. ✓

Lands End. v. Remy, 447 F. Supp. 2d 941 (w.d. Wis. 2006).

2. The stages of a proceeding under the Children's Code boil down to the plea hearing, the fact-finding hearing, and the dispositional hearing. Accordingly, this redraft deletes "the first hearing at every stage of the proceeding" and substitutes "the first hearing at the plea, fact-finding, and dispositional stages of the proceeding." ✓

★ 3. There is no need to insert a reference to sub. (2) (g) after "qualified expert witness" because that term is defined in s. 48.028(2) (g) and, therefore, is applicable throughout that section without the need to cross-reference the definition wherever found. ✓
^

If you have any questions about these changes or any other changes made by the redraft, please do not hesitate to contact me directly at the phone number or e-mail address listed below. ✓

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0174/4dn
GMM:lmk:pg

March 5, 2008

Mark Campbell and Mark Mitchell:

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